

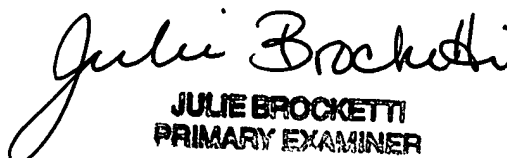
<b>Communication Re: Appeal</b>	Application No.	Applicant(s)	
	09/683,787	LOBECK, DAVID P.	
	Examiner	Art Unit	
	Julie K. Brockett	3713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. ☐ The Notice of Appeal filed on \_\_\_\_\_ is not acceptable because:
  - (a) ☐ it was not timely filed.
  - (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
  - (c) ☐ the appeal fee received on \_\_\_\_\_ was not timely filed.
  - (d) ☐ the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$\_\_\_\_\_.
  - (e) ☐ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
  - (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.
2. ☐ The appeal brief filed on \_\_\_\_\_ is NOT acceptable for the reason(s) indicated below:
  - (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
  - (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
  - (c) ☐ the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$\_\_\_\_\_.

The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. ☒ The appeal in this application is DISMISSED because:
  - (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
  - (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
  - (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
  - (d) ☒ other: See Continuation Sheet.
4. ☒ Because of the dismissal of the appeal, this application:
  - (a) ☒ is abandoned because there are no allowed claims.
  - (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
  - (c) ☐ is before the examiner for consideration.

  
**JULIE BROCKETT**  
**PRIMARY EXAMINER**

- Continuation of 3. (d) Other: It is noted that Appellant's appeal is dismissed for failure to timely file an amended brief which overcomes all of the reasons for non-compliance of which the appellant was notified on 12-9-05. Appellant has had two chances to correct the appeal brief and it is still not in compliance. Therefore, the application is abandoned. Specifically the arguments in the brief is not correct. Under the first ground of rejection, "Rejection under 35 USC 103(a) over US Patent No. 5,584,768 (Lee) in view of US Patent No. 5,735,751 (Pacheeco)" applicant has listed subheadings "(A) Claims 1, 2, 4, 10-13 and 17" "(B) Claims 1, 13 and 18", "(C) Claim 4", and "(D) Claims 13-22". It is noted that claims 1, 4 and 13 are listed in multiple subheadings, meaning they are argued separately multiple times? This is improper. Furthermore, claim 18 is not even rejected under the first ground of rejection and should not be included in a subheading under the first ground of rejection. Furthermore, claims 13-22 are not all included under the first ground of rejection and as such they should not fall together under a subheading. With respect to the fifth ground of rejection "Rejection under 35 USC 103(a) over US Patent No. 5,584,768 (Lee) in view of US Patent No. 5,735,751 (Pacheco) further in view of US Patent No. 4,757,194 (Simms)" appellant has a sub heading for claims 3, 18, and 22. But these claims are not rejected under this ground of rejection. The subheading should refer to claims 9, 14 and 19. Consequently, because of the numerous errors in appellant's argument section it is unclear as to exactly what arguments are being presented for each of the claims and which claims are being argued separately. Therefore, the appeal brief is not in compliant with the rules specified in 37 CFR 41.37. The Examiner further notes that in the section "Summary of the Claimed Subject Matter" Appellant included claims 5, 6, 15, 16, 3, 18, 22, 20, 21, 9, 14 and 19 with descriptions of the claims but forgot to insert paragraph and line numbers corresponding to the specification. .